

AWARD NO. 1
Case No. 1

Organization File No.
Carrier File No.

PUBLIC LAW BOARD NO. 7701

PARTIES) BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES DIVISION,
) INTERNATIONAL BROTHERHOOD OF TEAMSTERS
TO)
)
DISPUTE) IOWA INTERSTATE RAILROAD, LTD.

STATEMENT OF CLAIM:

1. The Carrier's discipline (termination of employment with the Iowa Interstate Railroad, Ltd, effective immediately) of Mr. L. Anton, issued by letter dated August 2, 2013, in connection with his alleged failure to comply with the Carrier's GCOR Rules 1.1, 1.1.1, 1.6, 6.27 and IAIS Safety Rules 10.1, 102 and 13.3 in that the section truck he was operating on June 24, 2013 came in contact with an American Railroad Builders tamper, causing damage to both pieces of equipment, was arbitrary, capricious, excessive and without merit.
2. As a consequence of the Carrier's violation referred to in Part 1 above, Mr. Anton shall be reinstated to service with seniority unimpaired and paid for all lost wages, including but not limited to all straight time hours, overtime hours, paid and non-paid allowances and safety incentives, expenses, per diems, vacation, sick time, health and welfare and dental insurance and any and all other benefits to which entitled.

FINDINGS:

The Board, upon consideration of the entire record and all of the evidence, finds that the parties are Carrier and Employee within the meaning of the Railway Labor Act, as amended, that this Board is duly constituted by Agreement dated July 17, 2014, this Board has jurisdiction over the dispute involved herein, and that the parties were given due notice of the hearing held.

Certain material facts in this case are undisputed. On June 24, 2013 Claimant was performing flagging service, operating Section Truck 0807, a hi-rail vehicle. At approximately 4:50 pm he was driving the truck on the main line under Track Warrant authority and Restricted Speed instructions, following a Mark IV Tamper. Although Claimant and the Tamper operator were going to travel between MP 189.1 and MP 188.8, the Tamper continued on an additional tenth of a mile. Claimant continued to follow the Tamper, but was unable to stop his truck short of the Tamper, colliding with it and causing damage to both the Tamper and the truck.

Claimant was subsequently directed to attend a formal investigation at which he was charged with his responsibility in connection with the impact collision. Following the investigation, held on July 18, 2013, Claimant was dismissed from service effective August 2, 2013.

The Board has reviewed the record of the investigation and finds that the Carrier had substantial evidence to support its charge against Claimant. Our analysis begins with the premise that a vehicle operating under Restricted Speed should not collide with equipment ahead of it. Restricted Speed means movement at a speed that allows stopping within half the range of vision short of train, engine, railroad car, men or equipment fouling the track, stop signal or derail or switch lined improperly. This is supposed to take into consideration elements such as darkness, rain, fog or condition of the rail. We do not see the Carrier arguing that Claimant was operating the truck at an excessive speed. The collision, therefore, was caused either by Claimant's failure to stop the truck in time to avoid hitting the tamper, or the failure of the truck to stop despite Claimant's efforts. The question before the Board is whether the accident was preventable. If it was, Claimant was properly subject to discipline.

The Organization has suggested two theories that it says would explain why the truck did not stop in time. First, it says the rail was covered with a slime, created by a combination of rain and powder from the ballast, that affected his braking distance. When a re-enactment of the incident was performed, it was apparent that another truck was able to stop under identical conditions. While there may have been some variation between the two vehicles, it is not evident that this variation was significant enough to affect the braking one way or the other. Furthermore, there is no suggestion that Claimant had experienced any problem stopping at other times during the day, or on other days while working in this territory under similar conditions.

Approximately two weeks after Claimant's dismissal, the Organization asserted that the truck was found to have brake problems. Specifically, the Organization stated:

I was informed that two of your employees, Mr. Brian Kern and Mr. Allan Schultz did an inspection of this vehicle and found numerous issues with this truck, particularly the HY-RAIL BRAKES.

They found out during the inspection that the Hy-rail brakes were not working. The brake line was pinched and apparently has been that way for a long time because a mechanic new [sic] about it. The rail brake reservoir did not have any brake fluid in it and after the rail brake reservoir was filled with fluid and the brakes were tested, one of the brakes shoes fell off.

According to the findings by these men, the rail brakes have been inoperable for quite some time.

The Board does not find this to be sufficient evidence to relieve Claimant of his responsibility. Rather, the information raises more questions than it answers. According to the Organization, this inspection was conducted days after the investigation. This would have been approximately one month after the collision. Thus, there is no evidence this condition was present on June 24, 2013. One could also speculate that the problem was caused by the collision. Most significant, though, is

the fact that Claimant had experienced no braking problems with the truck when he was driving it earlier in the day. It is not even clear that Claimant had attempted to apply these brakes, which are operated separately from the truck brakes. Because the investigation did not address a problem with the truck's brakes, these questions cannot be answered.

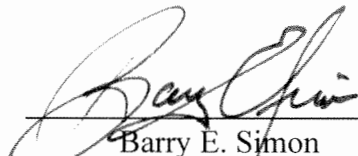
The Organization's argument regarding the brakes raises another issue. Because the inspection of the truck was not performed until after both the investigation and the issuance of Claimant's dismissal, it was not considered by the Hearing Officer. Under the system of jurisprudence in this industry, it is the Hearing Officer who serves in the role of fact-finder, not the Board. Because arbitration in the railroad industry is, for all intents and purposes, an appellate process, our role is limited to determining whether the Hearing Officer's conclusion was reasonable. As has often been stated, we will not overturn a disciplinary action unless we find it was unreasonable, even if we do not agree with it. If this Board were to consider evidence that was not presented at the investigation, and therefore not a part of the Hearing Officer's consideration, it would effectively establish the Board as the fact-finder. That is not a role we can assume absent an agreement by the parties.

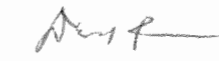
While the Organization argued that Claimant was not distracted at the time of the collision, it is noted that the investigation transcript reflects that the call record on his Company issued cell phone had been "wiped clean," deleting even the call Claimant had made to report the collision.

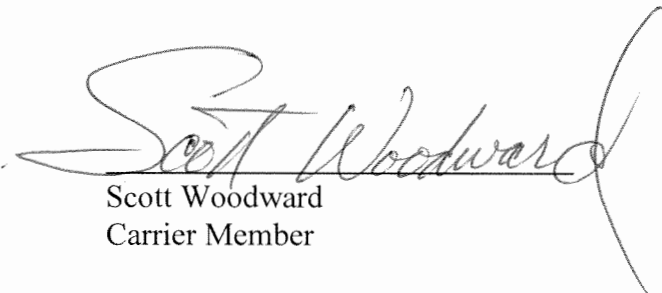
Rejecting both of the Organization's arguments, we find that the charge against Claimant was proven. We then turn to the question of whether the discipline was appropriate. While a collision of this nature might not generally warrant the discharge of an employee with sixteen years of service,

we find that Claimant's prior record supports his dismissal. That record shows that this was Claimant's fourth vehicular accident. More importantly, we note that this was his second dismissal. On January 29, 2013 he was dismissed for engaging in violence in the workplace, continuing that violence off the property at the end of his tour of duty, and resuming the violence at work the following day. By agreement reached on April 11, 2013, Claimant was reinstated on a leniency basis "to extend [him] one final opportunity . . . to demonstrate his willingness to comply with the Rules and Policies under which he is employed." The incident giving rise to his dismissal in this case arose less than three months later. In light of this record, we cannot find that the discipline imposed was arbitrary or excessive. In reaching this conclusion, we have considered all of the arguments advanced by the Organization and find them to be unpersuasive.

AWARD: Claim denied.


Barry E. Simon
Chairman and Neutral Member


David Pascarella
Employee Member


Scott Woodward
Carrier Member

Dated: July 4, 2015
Arlington Heights, Illinois